

## **REMARKS**

The Office Action of December 1, 2006 has been received and considered. Claims 1-24 are pending. Claims 1 and 17 have been amended. Claims 25-28 have been added. The specification has been amended to more clearly recite that the first end of the pedal, or foot engaging member, is a free end, and not directly connected to the vehicle. Reconsideration of the application in view of the foregoing amendments and following remarks is respectfully requested. Each of the Examiner's rejections is discussed below.

### **Section 112**

Claim 8 has been rejected under 35 U.S.C. § 112, second paragraph, on the grounds that the phrase "secured to a front of dash of a vehicle" is grammatically awkward and is unclear. This rejection is respectfully traversed.

Applicant respectfully submits that the phrase in question would be clear to one skilled in the art. The term of art "front of dash," is often referred to as a "firewall," and refers to structure, e.g., sheet metal, that separates the passenger compartment of a vehicle from the engine compartment. Accordingly, claim 8 is believed to be in proper form and an indication to that effect is respectfully requested at this time.

### **Section 102**

Claims 1, 3, 4, 6-17, 19 20, and 22-24 stand rejected under 35 U.S.C. § 102(e) over U.S. Patent No. 6,655,199 to Smith ("Smith"). This rejection is respectfully traversed.

Smith discloses an electronic foot pedal vehicle control system having a force sensor 24 disposed within a base 14 of a foot pedal 12. Smith shows a plastic pedal and

cites “insert molding” as a preferred manner of positioning the electronics inside the pedal. (Col. 3, lines 54-57.)

Smith fails to disclose or make obvious a drive-by-wire assembly for a motor vehicle including a foot engaging member configured to remain substantially stationary when engaged by a foot of a user and a force measuring sensor **secured to an exterior surface of a foot engaging member**, as required by independent claims 1 and 17.

Claims 1 and 17 have been amended to clarify that the force measuring sensor is secured to an exterior surface of the foot engaging member, or pedal, which is not disclosed or made obvious by the teachings of Smith.

Accordingly, the rejection is improper and should be withdrawn.

### **Section 103**

#### **Claims 5 and 21**

Claims 5 and 21 stand rejected under 35 U.S.C. § 103(a) over Smith and U.S. Patent No. 6,633,157 to Yamaki et al. (“Yamaki”). Yamaki is cited as disclosing a Hall-effect sensor excited by a magnet and a spring. This rejection is respectfully traversed.

Yamaki fails to overcome the deficiencies of Smith discussed above and, therefore, the rejection is improper and should be withdrawn.

#### **Claims 2 and 18**

Claims 2 and 18 stand rejected under 35 U.S.C. § 103(a) over Smith and U.S. Patent No. 6,571,62 to Mendis (“Mendis”). Mendis is cited as disclosing a force measuring sensor comprising a strain gauge. This rejection is respectfully traversed.

Applicant respectfully submits that the proposed combination of Smith and Mendis is improper. Smith expressly teaches away from the proposed combination.

Specifically, Smith asserts that its system is different from the prior art in that pedal 12 is non-movably mounted within the vehicle, thereby expressly distinguishing over pedal systems such as Mendis in which the pedal is designed to move (col. 3, lines 46-50). Thus, one skilled in the art would be taught away from the proposed combination of Smith and Mendis. Accordingly, the rejection is improper and should be withdrawn.

### **Conclusion**

In view of the forgoing, applicant believes that pending claims 1-28 are in form for allowance, and an indication to that effect is respectfully requested at this time. Please apply any charges or credits to Deposit Account No. 19-0733.

Respectfully submitted,

Date: April 2, 2007

/Gregory J. Cohan/  
Gregory J. Cohan  
Reg. No. 40,959  
Customer No. 28316  
Banner & Witcoff, Ltd.  
28 State Street, 28<sup>th</sup> Floor  
Boston, MA 02109  
(617)-720-9600